

PATENT
Customer No. 22,852
Attorney Docket No. 7883.0011-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Peter J. WILK et al.

Application No.: 09/828,794

Filed: April 10, 2001

For: LEFT VENTRICULAR CONDUIT
WITH BLOOD VESSEL GRAFT

)
) Notice of Allowance: May 20, 2004
)
) Group Art Unit: 3762
)
) Examiner: P. BIANCO
)
)
) Confirmation No. 9962
)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)**

In accordance with 37 C.F.R. § 1.705, applicants hereby request reconsideration of the patent term adjustment of 292 days indicated on the "Determination of Patent Term Adjustment Under 35 U.S.C. 154(b)" that accompanied the May 20, 2004 Notice of Allowance. Specifically, as described below, this patent is entitled 320 days of additional patent term, assuming the patent issues within four months of the payment of the issue fee. As required by 37 C.F.R. §§ 1.705(b)(1), this Request is accompanied by a check to pay the \$200.00 fee set forth in 37 C.F.R. § 1.18(e).

The PAIR printout, indicating how the Office calculated the 292 day patent term adjustment indicated on the face of this patent is attached hereto. Applicants agree with the Office that the Office accrued delay in issuing this patent under 37 C.F.R. § 1.702(a) of 356 days. Applicants also agree with the Office that this period of adjustment is

reduced under 37 C.F.R. § 1.704(b) by thirty-six (36) days because Applicants filed a Supplemental Response (to the Office Action mailed May 9, 2003) on September 5, 2003, after Applicants had already filed a response on July 31, 2003. See 37 C.F.R. § 1.704(c)(8).

The PAIR printout, however, incorrectly indicates that this application is further subject to a twenty-eight (28) day reduction in patent term because a Notice to File Missing Parts was mailed on June 4, 2001, but the application was not completed until October 2, 2001. Applicants agree that a Notice was mailed on June 4, 2001. However, Applicants filed a Response to this Notice on August 3, 2001. Applicants attach a copy of the Response, together with a copy of a stamped postcard indicating that the Response and its accompanying documents were received by the Office on August 3, 2001. Thus, Applicants responded to the Notice to File Missing Parts within three months of the mailing date of the Notice, thus creating no reduction in patent term adjustment under 37 C.F.R. § 1.704. Applicants are not aware of any event in the prosecution of this application that can account for the October 2, 2001 date on the PAIR printout labeled "Application is Now Complete" and assume, therefore, that this entry corresponds to a processing step at the PTO that is not relevant to the patent term adjustment of this application.

Together, the reductions of patent term adjustment under 37 C.F.R. § 1.704 total thirty-six (36) days. Subtracting this reduction from the 356 days of PTO delay yields the correct 320 day patent term adjustment for this patent that Applicants seek herein.

In accordance with 37 C.F.R. §1.705(b)(2)(iv)(B), there was no circumstance, other than discussed above, constituting a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in 37 C.F.R. §1.704.


In accordance with 37 C.F.R. § 1.705(b)(iii), this application is subject to a Terminal Disclaimer and is set to expire in accordance with the provisions set forth in the Terminal Disclaimer filed July 31, 2003, a copy of which is submitted herewith.

Please grant any extensions of time required to enter this Request and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: August 19, 2004

By: 
Michael W. Kim
Reg. No. 51,880

Attachments:

Copy of Response to Notice to File Missing Parts filed August 3, 2001 (1 page);
Copy of Post Card date stamped by the PTO on August 3, 2001 (1 page);
Copy of Terminal Disclaimer dated July 31, 2003 (3 pages);
PAIR printout (2 pages).



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Attorney Docket No. 7883.0011-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Peter J. WILK et al.) Group Art Unit: 3762
Application No.: 09/828,794) Examiner: Unknown
Filed: April 10, 2001)
For: LEFT VENTRICULAR CONDUIT WITH)
BLOOD VESSEL GRAFT)

Assistant Commissioner for Patents
Washington, DC 20231

Attention: **BOX MISSING PARTS**

Sir:

**RESPONSE TO NOTICE TO FILE
MISSING PARTS OF NONPROVISIONAL APPLICATION**

In response to the Notice to File Missing Parts of Nonprovisional Application of June 4, 2001, Applicants submit a copy of the Declaration and Power of Attorney from parent application, U.S. Application No. 09/369,061, to which this application claims the benefits of priority, the required surcharge of \$65.00, filing fee of \$355.00, and a copy of the Notice of Missing Parts.

Please associate the enclosed Declaration and Power of Attorney with the above-referenced application.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account no. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: Susanne C. Tinker

Susanne C. Tinker
Reg. No. 44,472

Dated: August 3, 2001

LAW OFFICES
FINNEGAN, HENDERSON,
FARABOW, GARRETT,
& DUNNER, L.L.P.
1300 I STREET, N. W.
WASHINGTON, DC 20005
202-408-4000

BCM/LIB/SCT



PLEASE STAMP TO ACKNOWLEDGE RECEIPT OF THE FOLLOWING:

In Re Application of: Peter J. WILK et al.

Application No.: 09/828,794

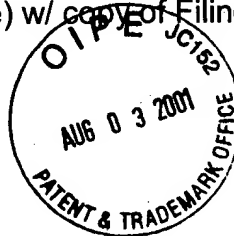
Group Art Unit: 3762

Filed: April 10, 2001

Examiner: Unknown

For: LEFT VENTRICULAR CONDUIT WITH BLOOD VESSEL GRAFT

1. Transmittal Letter (1 page)
2. Response to Notice to File Missing Parts of Nonprovisional Application (1 page) w/ copy of Notice to File Missing Parts of Nonprovisional Application (1 page) and Declaration (6 pages)
3. Request for Corrected Filing Receipt (1 page) w/ copy of Filing Receipt indicating requested changes (1 page)
4. Preliminary Amendment (7 pages)
5. Check in the amount of \$445.00



Dated August 3, 2001
Docket No.: 7883.0011-01
SCT/eah - Mail Drop 955

AUG 03 2001

(Due Date: 8/4/01)

PLEASE RETURN POSTCARD TO E. HARRIS @ MD 955

Del 08-05-01 pua



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Customer No. 22,852
Attorney Docket No. 7883.0011-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
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Peter J. WILK et al.) Group Art Unit: 3762
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Application No.: 09/828,794) Examiner: P. BIANCO
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Filed: April 10, 2001)
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For: LEFT VENTRICULAR CONDUIT)
WITH BLOOD VESSEL GRAFT)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TERMINAL DISCLAIMER

Sir:

Petitioner ("Assignee") Percardia, Inc., duly organized under the laws of the State of Delaware and having its principal place of business at 10 Al Paul Lane, Suite 202, Merrimack, New Hampshire 03054, through its attorneys, represents that it is the only assignee of the entire right, title, and interest in and to the above-identified application, U.S. Patent Application No. 09/828,794, filed April 10, 2001, for LEFT VENTRICULAR CONDUIT WITH BLOOD VESSEL GRAFT, as indicated by assignment duly recorded in the United States Patent and Trademark Office at Reel 10468, Frame 0027, and is and at all times was the only assignee of U.S. Patent No. 6,254,564 B1, issued July 3, 2001, for LEFT VENTRICULAR CONDUIT WITH BLOOD VESSEL GRAFT, also as

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indicated by the assignment duly recorded in the United States Patent and Trademark Office at Reel 10468, Frame 0027.

To obviate a double patenting rejection, Assignee hereby disclaims, under the provisions of 37 C.F.R. § 1.321, the terminal part of any patent granted on the above-identified U.S. Patent Application No. 09/828,794, which would extend beyond the expiration date of U.S. Patent No. 6,254,564 B1 and hereby agrees that any patent so granted on the above-identified U.S. Patent Application No. 09/828,794 shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent No. 6,254,564 B1. This agreement runs with any patent granted on the above-identified U.S. Patent Application No. 09/828,794 and is binding upon the grantee, its successors, or assigns.

In making the above disclaimer, Assignee does not disclaim the terminal part of any patent granted on the above-identified U.S. Patent Application No. 09/828,794 that would extend beyond the expiration date of the full statutory term, as defined in 35 U.S.C. §§ 154 to 156 and 173, of U.S. Patent No. 6,254,564 B1, as shortened by any terminal disclaimer, in the event that U.S. Patent No. 6,254,564 B1 expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or in part, is terminally disclaimed under 37 C.F.R. § 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term, as presently shortened by any terminal disclaimer.

In accordance with the fee schedule set forth in 37 C.F.R. § 1.20(d), the required fee of \$55.00 is being filed with this Terminal Disclaimer.

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Application No. 09/828,794

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Attorney Docket No. 7883.0011-01

If a check for the required fee is not filed concurrently herewith or if there are any additional fees due in connection with the filing of this reply, please charge the fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 31, 2003

By: 

Leslie I. Bookoff
Reg. No. 38,084

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09/828,794

LEFT VENTRICULAR CONDUIT WITH BLOOD VESSEL GRAFT

Patent Term Adjustment History



Patent Term Adjustment (PTA) for Application Number: 09/828,794			
			Days
Filing or 371(c) Date:	04-10-2001	USPTO Delay (PTO):	356
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL):	64
Post-Issue Petitions (days):	+0	Total PTA:	292
USPTO Adjustment(days):	+0	Explanation Of Calculations	
Patent Term Adjustment History			
Date	Contents Description	PTO(Days)	APPL (Days)
05-20-2004	Mail Notice of Allowance		
05-18-2004	Issue Revision Completed		
05-17-2004	Notice of Allowance Data Verification Completed		
05-17-2004	Notice of Allowability		
05-14-2004	Date Forwarded to Examiner		
05-14-2004	Date Forwarded to Examiner		
05-14-2004	Express Abandonment (for Entry of CPA / RCE / Rule129)		
03-23-2004	Request for Continued Examination (RCE)		
03-23-2004	Workflow - Request for RCE - Begin		
12-23-2003	Mail Notification of Terminal Disclaimer - Not Accepted		
12-23-2003	Mail Notification of Terminal Disclaimer - Accepted		
12-23-2003	Mail Final Rejection (PTOL - 326)	23	
12-15-2003	Final Rejection	↑	
12-12-2003	Notification of Terminal Disclaimer - Accepted	↑	
12-02-2003	Notification of Terminal Disclaimer - Not Accepted	↑	
09-25-2003	Date Forwarded to Examiner	↑	
09-05-2003	Supplemental Response	↑	36
08-28-2003	Date Forwarded to Examiner	↑	↑
07-31-2003	Terminal Disclaimer Filed	↑	
07-31-2003	Response after Non-Final Action	↑	↑
07-31-2003	Request for Extension of Time - Granted	↑	
05-09-2003	Mail Non-Final Rejection	333	
05-05-2003	Non-Final Rejection	↑	
12-11-2001	Case Docketed to Examiner in GAU	↑	
10-02-2001	Application Dispatched from OIPE	↑	
10-02-2001	Application Is Now Complete	↑	28
		↑	

08-03-2001	Preliminary Amendment		
08-03-2001	Preliminary Amendment	↑	
06-04-2001	Notice Mailed--Application Incomplete-- Filing Date Assigned	↑	↑
06-01-2001	Correspondence Address Change	↑	
04-25-2001	IFW Scan & PACR Auto Security Review	↑	
04-10-2001	Preliminary Amendment	↑	
04-10-2001	Initial Exam Team nn	↑	

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